IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

OP.No. 22033 of 2002(W)

PETITIONER:

DR.G.MURALEEDHARA KURUP,
PROFESSOR OF BIOCHEMISTRY, SCHOOL OF BIOSCIENCES,
MAHATMA GANDHI UNIVERSITY.

BY ADV. SRI.M.BALAGOVINDAN,
SRI.P.M.JOSEPH.

RESPONDENTS:
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1. **MAHATMA GANDHI UNIVERSITY,**
   REPRESENTED BY ITS REGISTRAR, P.D.HILLS P.O.,
   KOTTAYAM.

2. **THE VICE CHANCELLOR,**
   MAHATMA GANDHI UNIVERSITY.

3. **DR.M.PADMANABHAN,**
   READER & HEAD SCHOOL OF CHEMICAL SCIENCES,
   MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

4. **DR.P.K.RADHAKRISHNAN,**
   PROFESSOR, SCHOOL OF CHEMICAL SCIENCES,
   MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

5. **DR.M.R.GOPINATHAN NAIR,**
   READER, SCHOOL OF CHEMICAL SCIENCES,
   MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

O.P. NO. 22033/2002:

6. DR.C.S.MENON,
READER & HEAD SCHOOL OF PURE & APPLIED PHYSICS,
MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

BY ADV. SRI.V.K.MUHAMMAD YOUSUF,
SRI.O.V.RADHAKRISHNAN,
DR.P.LEELAKRISHNAN,
SRI.SHYAM KRISHNAN,
SRI. T.A. SHAJI, SC, M.G.UNIVERSITY.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 37733/2002 IN O.P. NO. 22033/2002

DISMISSED

02/08/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT IN O.P. NO. 3080/91 OF THIS HONOURABLE COURT.

EXT.P.2: COPY OF THE APPOINTMENT ORDER FROM THE UNIVERSITY.

EXT.P.3: COPY OF THE ORDER OF THE SYNDICATE EXTENDING THE SERVICE BENEFITS.

EXT.P.4: COPY OF THE ORDER OF PRMOTION AS PROFESSOR.

EXT.P.5: COPY OF THE ORDER OF IMPLEMENTATION UGC SCHEME BY M.G. UNIVERSITY.

EXT.P.6: COPY OF THE RELEVANT PORTION OF THE UGC SCHEME.

EXT.P.7: COPY OF THE RESOLUTION NO. 1661 OF THE SYNDICATE.

EXT.P.8: COPY OF THE RESOLUTION NO. 1732 OF THE SYNDICATE.

EXT.P.9: COPY OF THE RESOLUTION NO. 1817 OF THE SYNDICATE.

EXT.P.10: COPY OF THE PROMOTION ORDER OF THE R.3. AS PROFESSOR.

EXT.P.11: COPY OF THE REPRESENATION TO THE R.2.

EXT.P.12: COPY OF THE JUDGMENT IN O.P. 451/2002 OF THIS HONOURABLE COURT.

EXT.P.13: COPY OF THE ORDER PASSED BY THE VICE CHANCELLOR.

EXT.P.14: COPY OF THE RELEVANT PORTION OF CHAPTER 4 SECTION 27 OF M.G. UNIVERSITY ACT.

EXT.P.15: COPY OF THE RELEVANT PORTION OF CHAPTER 4 SECTION 21 OF THE M.G. UNIVERSITY ACT.

EXT.P.16: COPY OF THE RELEVANT PORTION CHAPTER 3 SECTION 17 OF THE M.G. UNIVERSITY ACT.

O.P. NO. 22033/2002:

RESPONDENT'S EXHIBITS:

EXT.R3.A: RELEVANT PROVISIONS OF UGC NORMS.

EXT.R4.A: COPY OF THE ORDER NO. AII (1)/1913/98/ADMN. DTD. 27/04/2001 OF THE M.G UNIVERSITY.

EXT.R4.B: COPY OF THE ORDER NO. AII (1)/114/95/ADMN. DTD. 04/03/1996 OF THE M.G. UNIVERSITY.

EXT.R4.C: COPY OF THE ORDER NO. AII (1)/114/95/AMN. DTD. 16/03/1996 OF THE M.G.UNIVERSITY.

EXT.R4.D: COPY OF THE REPRESENTATION DTD. 20/03/2002 OF THE R.4. BEFORE THE HONOURABLE VICE CHANCELLOR, M.G. UNIVERSITY, KOTTAYAM.

EXT.R4.E: COPY OF THE REPRESENTATION DTD. 30/03/2002 OF THE R.4. BEFORE THE HONOURABLE VICE CHANCELLOR, M.G. UNIVERSITY, KOTTAYAM.

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.22033 OF 2002

Dated this the 2nd day of August, 2007

JUDGMENT

C.R.

The petitioner is a teacher in Bio-chemistry in the School of Bio-sciences in the Mahatma Gandhi University. The third respondent is a teacher in the School of Chemical Sciences in that University. The petitioner challenges Ext.P10 decision of the University, promoting the third respondent as Professor with effect from 20.11.1995 under the carer advancement scheme of UGC and Ext.P13, which apparently evidences that the Vice Chancellor had decided not to interfere with Ext.P10 decision, on the ground that the promotion given to the third respondent is on the basis of recommendations of a duly constituted selection committee as per the UGC guidelines.

2. Before coming to the rival contentions touching the merits of the claims, it needs to be considered whether the claim of the petitioner could be treated as a competing claim to that of the third respondent and whether the petitioner has a right to

challenge the promotion of the third respondent. The third respondent has challenged the locus standi of the petitioner to challenge the promotion given to him as per Ext.P10. The locus of the petitioner is projected by stating that the date of entry into the post of Professor would be relevant to determine the entitlement to be appointed as Dean of Faculty and Head of Department, which, in turn, would be the criteria for being nominated as a member of the Syndicate of the University.

3. Section 21 of the Mahatma Gandhi University Act, 1985, hereinafter referred to as the 'Act' for short, provides that three Deans of Faculties nominated by the Chancellor by rotation shall be among the “other members” of the Syndicate. Section 27 (1) of the Act provides that there shall be a Dean of each Faculty, who shall be nominated by the Chancellor, by rotation from among the Heads of University Departments or Professors. This has to be done in consultation with the Vice Chancellor. The appointment of Dean is, therefore, a nomination and such nomination is for a term of two years going by Sub-section (3) of

Section 27 and one who has been nominated as Dean would be eligible for re-nomination. The nomination, in terms of Sub-section (1) of Section 27, has to be from among the Heads of University Departments **or** Professors. This means that the Heads of University Departments and all the Professors would be within the zone of availability for the Chancellor to make the nomination in consultation with the Vice Chancellor. The seniority between them is not statutorily relevant. Therefore, a competition on the basis of seniority is just not prescribed by the Statute.

4. A reading of Section 21 of the Act would show that no Dean of Faculty has a vested right to be nominated by the Chancellor as a member of the Syndicate. Equally, Section 27 also does not provide any vested right in any Head of Department or Professor for being nominated as the Dean, while they would be available for being considered for nomination. So much so, the petitioner does not have a right to challenge the impugned promotion of the third respondent.

5. On to the merits, the placement of the petitioner as Reader, retrospectively from 18.3.1991, as per Ext.P3 and as Professor, retrospectively from 30.7.1996, as per Ext.P4, as if he was entitled to be considered for appointment as Reader with effect from the date of appointment of Dr.B.Harikumar, the second respondent in O.P.No.3080/91, disposed of by this Court as per Ext.P1 judgment, was considered by me yesterday in O.P.No.21749/03 filed by the 4th respondent and found against the interest of the petitioner herein. The retrospective placements given to the petitioner in the post of Reader and in the post of Professor have been found against. So much so, the claim of the petitioner that he was appointed as Professor with effect from 30.7.1996 does not hold good any more. Such placement could only be from 29.10.1999, the date of the Syndicate decision, by which, the petitioner was promoted as Professor under the merit promotion scheme.

6. The third respondent entered service as a direct recruit Reader, while the petitioner joined service as a Lecturer with the

application of the UGC scheme in terms of G.O.(P).No.171/99/H. Edn. dated 21.12.1999. In terms of clause 6.29 and 6.30 thereof, the third respondent was entitled to be considered for promotion from the post of Reader to that of Professor after 8 years of service as Reader. That has to be on the basis of a consideration by the Selection Committee. In the case of the third respondent, the Selection Committee, the constitution of which is not under challenge, found the third respondent eligible to be promoted on the completion of 8 years of his service as Reader in terms of clause 6.29 of the said Government Order. This has been done by the University as per Ext.P10. This means that the third respondent is placed in the post of Professor with effect from 20.11.1995 while by the effect of the judgment in O.P.No.21749/03 (supra), the date of placement of the petitioner in the post of Professor would be only 29.10.1999. Petitioner cannot, therefore, claim to have entered the cadre of Professor before the third respondent. Hence, the claim of the petitioner fails on merits as well.

In the result, this writ petition is dismissed. However, there will be no order as to costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.22033 OF 2002

JUDGMENT

2ND AUGUST, 2007.

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